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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/048,243	01/24/2002	Gerold Tebbe	011310	2695
22876	7590	11/18/2004	EXAMINER	
FACTOR & LAKE, LTD 1327 W. WASHINGTON BLVD. SUITE 5G/H CHICAGO, IL 60607			JUSKA, CHERYL ANN	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 11/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/048,243

Applicant(s)

TEBBE, GEROLD

Examiner

Cheryl Juska

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-51, 54 and 55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-51, 54 and 55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Applicant's Amendment After Final, filed October 22, 2004, has been entered. Claims 1-10 are cancelled, claims 52 and 53 are not entered, and new claims 54 and 55 are added. Thus, the pending claims are 11-51, 54, and 55.
2. Applicant's arguments with respect to the limitation of a "flexible network" have been fully considered and are persuasive. Thus, the prior art rejections based upon Ravella (US 5,879,487) and Tebbe (DE 3 640 374), as set forth in sections 6-14 of the last Office Action are hereby withdrawn. Specifically, Ravella and Tebbe do not teach a non-slip carrier layer comprising an open network (e.g., grid, scrim, open weave fabric, etc.).

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 17 stands rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 17 is indefinite for the use of the phrase "wooly pile that is substantially higher than the pile of a normal velour material" as set forth in section 4 of the last Office Action.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 11, 12, 23, 25, 28, 29, 35-37, 43-45, and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by US 3,867,940 issued to Mesek et al.

Mesek discloses a diaper comprising a permeable facing layer, and absorbent core, and a liquid impermeable backing layer (abstract). The backing layer is reinforced by a material such as a scrim of cotton or polyester (col. 5, lines 44-47 and 52-56, col. 7, lines 5-10, and Figure 6). Said reinforcing material is bonded to the backing sheet on either side thereof (col. 5, lines 47-52). Thus, claims 11, 12, 25, 28, 29, 35-37, 43-45, and 51 are anticipated by the cited Mesek reference.

With respect to claim 23, it is argued that the scrim layer is located on the outer surface of the backing layer, it will inherently provide at least some resistance to friction due to its non-continuous surface. Thus, claim 23 is also anticipated.

Claim Rejections - 35 USC § 103

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Art Unit: 1771

8. Claims 11-17, 23, 24, 28-31, 36-39, and 44-47 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,612,113 issued to Irwin, Sr., as set forth in sections 15 and 16 of the last Office Action.

The claim "flexible network" is met by the Irwin teaching to a secondary backing comprising a open weave woven fabric (col. 1, lines 17-22, col. 2, lines 62-65, and Figure 2). Thus, said rejection is maintained.

9. Claims 20-22, 33, 34, 41, 42, 49, and 50 stand rejected under 35 USC 103(a) as being unpatentable over the cited Irwin patent in view of JP 05-051870 issued to Kawasaki and US 4,908,252 issued to Carnahan et al., as set forth in sections 17 and 18 of the last Office Action.

10. Claims 13-17, 30, 31, 38, 39, 46, 47, 54, and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Mesek patent in view of US 6,610,381 issued to Conway.

Mesek fails to teach an absorbent layer comprising a pile material. However, said materials are well known in the art of absorbent articles. For example, Conway teaches an absorbent article comprising a pile fabric and a barrier sheet (abstract). Thus, it would have been obvious to one skilled in the art to employ said pile fabric according to Conway as the absorbent layer of the Mesek patent since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. Therefore, said claims are rejected.

11. Claims 18, 19, 32, 40, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Mesek patent in view of Ravella (US 5,879,487) and/or Tebbe (DE 3 640 374).

Mesek does not explicitly teach an absorbent layer comprising a fleece material. However, said fleece materials are well known in the art of absorbent articles. For example,

Ravella teaches an absorbent article comprising a needlepunched nonwoven material (i.e., fleece) (abstract and col. 6, lines 16-46). Additionally, Tebbe teaches an absorbent article comprising an absorbent layer of "paper fleece, fiber fleece, cellulose, cellulose fleece or a fabric of wool or cotton" (English abstract). Thus, it would have been obvious to one skilled in the art to employ a fleece material as is known in the art for an absorbent layer of an absorbent article since said materials are well known in the art as suitable. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. Therefore, claims 18, 19, 32, 40, and 48 are rejected.

12. Claims 20, 33, 41, and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Mesek patent in view of Tebbe.

Claims 21, 22, 34, 42, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Mesek and Conway patents in further view of Tebbe.

Mesek fails to teach the presence of microcapsules in the absorbent layer. However, said presence is known in the art. For example, Tebbe teaches an absorbent article having microcapsules therein (English abstract). Said microcapsules contain perfumes and inflammation inhibitors. Thus, it would have been obvious to one skilled in the art to employ microcapsules as taught by Tebbe in the absorbent article of Mesek in order to provide odor control and skin inflammation. Thus, claims 20, 33, 41, and 49 are rejected.

With respect to claims 21, 22, 34, 42, and 50, it would have also been obvious to employ the microcapsules of Tebbe with the pile absorbent article of Mesek and Conway. Thus, said claims are also rejected.

13. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Mesek patent.

Although Mesek fails to teach employing a rubber material for the reinforcing scrim material, it would have been obvious to one skilled in the art to do since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. Such a rubber scrim would provide the necessary reinforcement while providing non-slip characteristics and/or elasticity. Therefore, claim 24 is rejected.

14. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Mesek patent in view of the cited Ravella reference.

Although Mesek does not explicitly teach a facing layer comprising a hydrophobic material, it is argued said claims are obvious over the cited art. Specifically, it is asserted that the invention of Mesek dates back to 1973, so it is not surprising that this feature is not disclosed. However, hydrophobic face layers are now common in the art. For example, Ravella teaches a polyester (i.e., hydrophobic) face layer (col. 10, lines 12-16). Therefore, it would have been obvious to one skilled in the art to update the Mesek invention with a hydrophobic facing layer which allows fluids to permeate into the absorbent core while feeling dry to the user. Thus, claim 26 is rejected as obvious over the cited art.

15. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Mesek patent in view of the cited Ravella reference in further view of Hedenberg (GB 2 335 627).

Although Mesek and Ravella do not explicitly teach spot bonding of the cover layer to the absorbent layer, said bonding is well known in the art. For example, Hedenberg teaches an

absorbent article comprising an absorbent layer and a liquid permeable cover layer, wherein at least one of the tow layers includes thermoplastic fibers for spot bonding (abstract). Hence, it would have been obvious to one skilled in the art to attach the cover layer by spot bonding at taught by Hedenberg in order to produce a uniform bond across the layers without employing a continuous layer of adhesive that would impair the absorbency of said absorbent layer. Thus, claim 27 is rejected.

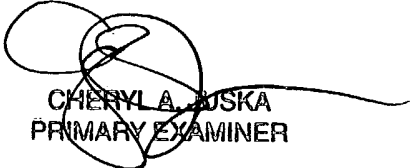
Conclusion

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

cj
November 8, 2004


CHERYL A. JUSKA
PRIMARY EXAMINER